

DEPOSITION OF:
ELMER BORCHARDT (5-12-03) CONDENSED

IN THE CIRCUIT COURT OF MILWAUKEE COUNTY
STATE OF WISCONSIN

MARJORIE A. TAKAVITZ,
individually and as special
administrator of the Estate
of WILLIAM A. TAKAVITZ,

Plaintiffs,

CASE NO. 02-CV-002551

-vs-

SPRINKMANN SONS, INC.,
a corporation, et al.,

 COPY

Defendants.

Deposition of ELMER H. BORCHARDT, called for examination by and on behalf of the Plaintiffs, under and pursuant to the provisions of Chapter 804 of the Wisconsin Statutes, and the acts amendatory thereof and supplementary thereto, pursuant to Notice of Deposition, taken at the Law Offices of Terschan, Steinle & Ness, 2600 North Mayfair Road, Suite 700, Milwaukee, Milwaukee County, Wisconsin, on the 12th day of May, 2003, commencing at 10:10 a.m. to 10:45 a.m. in the forenoon. Reported by Melody D. West, Notary Public, Court Reporter.

* * * *

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A-P-P-E-A-R-A-N-C-E-S

CASCINO VAUGHAN LAW OFFICES, LTD., by GEORGE H. SENTENEY, ESQ., 220 South Ashland, Chicago, Illinois, 60607, appeared on behalf of the Plaintiffs.

CRIVELLO, CARLSON & MENTKOWSKI, S.C., by TRAVIS J. RHOADES, ESQ., 710 North Plankinton Avenue, Suite 500, Milwaukee, Wisconsin, 53203, appeared on behalf of the Defendant, SPRINKMANN SONS, INC. and on behalf of TOWER AUTOMOTIVE PRODUCTS COMPANY.

TERSCHAN, STEINLE & NESS, by FRANK R. TERSCHAN, ESQ., 2600 North Mayfair Road, Suite 700, Milwaukee, Wisconsin, 53226-1314, appeared on behalf of the Defendant L & S INSULATION.

HINSHAW & CULBERTSON, by MELLISSA A. SCHAFER, ESQ., 100 East Wisconsin Avenue, Suite 2600, Milwaukee, Wisconsin, 53202-4115, appeared on behalf of the Defendant OAKFABCO.

SCHIFF, HARDIN & WAITE, by MATTHEW C. JARDINE, ESQ., 6600 Sears Tower, Chicago, Illinois, 60606, appeared on behalf of the Defendant OWENS-ILLINOIS.

* * *

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TRANSCRIPT OF PROCEEDINGS

ELMER H. BORCHARDT, called for examination by and on behalf of the Plaintiffs, being first duly sworn, was examined and testified as follows:

(Deposition Exhibit Nos. 1 through 5

were marked for identification by the Court Reporter.)

EXAMINATION

BY MR. SENTENEY:

10 Q. Would you state your full name, sir?

11 A. Elmer H. Borchardt.

12 Q. And your current address -- your professional
13 address is what? Professional business address
14 is what?

15 A. 616 South 89th Street, Milwaukee, 53214.

16 Q. Are you currently employed, sir?

17 A. By L & S.

18 Q. In what capacity are you employed by them?

19 A. I'm the president.

20 Q. You've been employed by them for approximately
21 53 years now; is that correct?

22 A. Correct.

23 Q. You've been deposed before, sir?

24 A. Many times.

25 Q. What's your best estimate of the number of

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1 times?

2 A. Fifteen.

3 Q. Okay. Would all of those be in some way or
4 another in your capacity as president of L & S
5 Corporation?6 A. Not all as president, but probably more familiar
7 with the workings in the field than anyone else
8 in the company at that time.9 Q. Okay. What percentage of those depositions have
10 you been involved in would be related to
11 asbestos litigation of any type?

12 A. I don't know.

13 Q. Okay.

14 A. I don't have the faintest idea. They just ask a
15 lot of questions in relation to people, and I
16 gave them the answers and was truthful.17 Q. So you don't know what percentage is related to
18 asbestos litigation?19 A. Well, I presume there's some related to that;
20 but I wouldn't have the -- I'm not going to
21 guess at it.22 Q. You brought four books today; correct? And
23 they're the contract ledger books of L & S
24 Corporation?

25 A. Yes.

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- 1 Q. And we'll get into those in more detail later;
 2 but those books, essentially, represent the --
 3 as I understand it, numerical sequence, the
 4 contracts that L & S entered into from at least
 5 in 1947 until the 1970s; is that correct?
 6 A. That's correct.
 7 Q. And then we've marked as Deposition Exhibits 1
 8 through 4 today copies of those books; correct?
 9 A. If you say so. I'll accept that.
 10 Q. Well, sometime I would like you to take a chance
 11 to review those and see whether you agree that
 12 Exhibits 1 through 4 -- Your counsel will
 13 stipulate that they are copies -- reasonable
 14 copies of the ledger books brought.
 15 MR. TERSCHAN: Yeah, I don't think it
 16 makes a lot of sense for Mr. Borchardt to go
 17 through a page at a time and make sure they're
 18 accurate copies. I think we can work out, if
 19 you have someone who says that they made the
 20 copies or if we had Kinko make it or someone, we
 21 can make out that they're reasonable copies.
 22 MR. SENTENEY: Okay.
 23 MR. TERSCHAN: Or accurate copies.
 24 THE WITNESS: Well, the handwriting
 25 would correspond. That handwriting and the copy

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- 1 Q. Anything other than Exhibit 5 did you review?
 2 A. No. I'm sorry. I'm shaking my head. No.
 3 Q. Other than your counsel, did you talk to anyone
 4 in preparation for today?
 5 A. No.
 6 Q. What's your educational level, sir?
 7 A. High school, touch of college, Air Force, cadet
 8 training, little bit back in school after that
 9 and then into the trades.
 10 Q. Okay. And by "the trades," you mean starting
 11 with L & S in about 1950?
 12 A. Yes.
 13 Q. What did you do -- Any work other than your
 14 military career before you started at L & S?
 15 A. I worked in several different bits of employment
 16 in Milwaukee.
 17 Q. Okay. Just examples, like what, sir?
 18 A. Breweries.
 19 Q. Okay.
 20 A. Work that was readily available.
 21 Q. Is this like the general labor type of work or
 22 what?
 23 A. Yeah, you had to join the union.
 24 Q. Okay.
 25 A. Anything that's done in the brewery.

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- 1 should be the same. It was all done by one
 2 individual.
 3 MR. SENTENEY: Okay. We will go into
 4 that later then, sir.
 5 Q. Other than the four books, have you brought
 6 anything else with you today?
 7 A. No, sir.
 8 Q. Did you review anything prior to today's
 9 deposition?
 10 A. Yes.
 11 Q. What did you review?
 12 A. I was furnished a summary of all of this.
 13 Q. And would that summary be Exhibit 5?
 14 MR. TERSCHAN: Was that the same
 15 summary, just for the record, on April 8th that
 16 you sent a summary? I don't know if it's the
 17 same one or not.
 18 MR. SENTENEY: It should be the same
 19 one. Maybe it's different printing, but the
 20 information is the same.
 21 MR. TERSCHAN: Yeah.
 22 THE WITNESS: Yes.
 23 MR. TERSCHAN: Then that's the one he
 24 reviewed.
 25 MR. SENTENEY:

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- 1 Q. All right. In your education, professional
 2 career, have you gained what you consider to be
 3 any specialized knowledge in the area of what's
 4 called industrial hygiene?
 5 A. No.
 6 Q. How about any specialized knowledge or training
 7 in the area of product safety?
 8 A. Only what we picked up as we went through the
 9 years.
 10 Q. Do you claim to have any specialized knowledge
 11 as far as the hazards associated with asbestos,
 12 sir?
 13 A. Only from the time -- from the time factor that
 14 occurred after Dr. Selikoff's initial articles
 15 and then when it became more public knowledge,
 16 that's when I became more aware of it.
 17 Q. So would it be fair to say that your knowledge
 18 came from newspaper articles or just some
 19 journal references you've read?
 20 A. Well, that was a composite report by --
 21 authorized by the union, so that's how we
 22 eventually found out about it.
 23 Q. And you found out about Dr. Selikoff's article
 24 in the early '70s; is that correct?
 25 A. I think it was earlier than that.

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- 1 Q. What is your best estimate of when that would
2 have been?
3 A. I think one of your interrogatories said it was
4 1964.
5 Q. So you would at least have had knowledge as far
6 as the hazards of asbestos as early as 1964; is
7 that your best estimate?
8 A. I don't know that I had knowledge of the hazards
9 at that time. I was aware of the report.
10 Q. Okay. And what is your understanding what the
11 report said?
12 A. That -- I thought they targeted more toward
13 powerhouse work, where it was used probably 95
14 or 100 percent products that contained asbestos.
15 That was not applicable to our company, because
16 we used mostly fiberglass.
17 Q. My question, again, sir: What was your
18 understanding as far as the hazard that that
19 article talked about related to asbestos? What
20 did it indicate that people could potentially
21 get as far as the conditions or diseases?
22 A. If they were exposed to asbestos and smoke, they
23 were high risk.
24 Q. High risk for what, sir?
25 A. Cancer.

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- 1 to the Insulation Division; correct?
2 A. Yeah, plumbing, heating or ventilating.
3 Q. You liquidated the roofing part of the company
4 in about the early 1960s; is that right?
5 A. That sounds about right.
6 Q. Now, you did -- L & S has historically been
7 commercially -- Strike that.
8 Typically their products or customers
9 have been in the commercial and industrial
10 sector; is that correct?
11 A. That is correct.
12 Q. So your insulation work would be commercial
13 insulation and industrial insulation for
14 factories and hospitals, schools, et cetera,
15 breweries; right?
16 A. Yes.
17 Q. You would use -- Strike that.
18 The insulation you would use would also
19 include for high temperature steam lines;
20 correct, or high temperature lines?
21 A. Yes.
22 Q. Okay. And from the time you started with L & S
23 in the early '50s to the 1970's or so, it would
24 be in the steam lines or high temperature lines
25 that you used asbestos insulation; correct?

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- 1 Q. And you were aware, were you not, by the late
2 '50s or early '60s, at least from co-workers,
3 were you aware that people died from asbestos?
4 A. Not in our company.
5 Q. I didn't ask you that. Were you aware in
6 talking to people, that people by the late '50s
7 or early '60s had died from asbestos exposure?
8 A. It was occasionally mentioned.
9 Q. When you started with L & S, there was both a
10 Roofing Division and an Insulation Division;
11 correct?
12 A. Correct.
13 Q. You started off as an estimator in the Roofing
14 Division or trained to be an estimator in the
15 Roofing Division?
16 A. Yes.
17 Q. You did that approximately five to seven years;
18 correct?
19 A. Yeah, three, four solid, and then an intermix
20 of -- I started helping out with the pipe
21 covering portion of our firm; and then I would
22 do both for a period of time until such a time
23 that we stopped doing roofing, and I then became
24 full time out in the field for insulation.
25 Q. When you say "pipe covering," that's referring

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- 1 A. No, that's not 100 percent correct. We
2 started -- Because of the products that were
3 available in the early '50s, that was all that
4 was available. And when Fiberglass started
5 promoting their products, we were one of the
6 first companies to switch over to fiberglass
7 because of a cost factor.
8 So anywhere from 1953 or '4 -- I don't
9 remember the exact date, into the '70s, we were
10 heavy in glass.
11 Q. You also used asbestos; correct?
12 A. When we were required to, yes.
13 Q. Okay. And when you used asbestos, it would be
14 for steam pipes and related boiler work;
15 correct?
16 A. No.
17 Q. Where else would you use asbestos then, sir?
18 A. Precharged, high temperature tanks, generator
19 exhausts; those types of things.
20 Q. And steam pipes?
21 A. Could be, but we had by that time switched
22 primarily to fiberglass.
23 Q. Okay. By the 1970s, L & S was up to maybe about
24 60 or so employees; would that be a fair
25 statement?

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1	A.	That's probably correct.		A.	Building Service Industrial Sales.
2	Q.	How many employees are there today, sir?		Q.	And they were your primary distributor that you would buy the products from over the years?
3	A.	Today?		A.	To this date.
4	Q.	Today.		Q.	For how long have you had that business arrangement with them?
5	A.	40ish.		A.	Since the early '50s.
6	Q.	What do you -- Do you still do insulation work today?		Q.	So basically, you had an account with them; and so if you ever needed a product, you would call them and say, "Building Services, we need brand X, or we need X amount of pipe covering." Is that basically how it works?
7	A.	Oh, yes. That's all we do.		A.	Yes, truckload, carload quantities.
8	Q.	What kind of insulation work do you do today?		Q.	And if you needed asbestos, they would be who you would contact?
9	A.	We insulate systems for plumbing, heating and ventilating.		A.	For the limited amount we purchased, yes.
10	Q.	Your -- Strike that.		Q.	You're familiar with a brand Kaylo; correct?
11		Do you still own about 89 percent of the shares of stock in L & S Corporation?		A.	Yes.
12	A.	No.		Q.	You've used it for high temperature insulations; correct?
13	Q.	How many -- What percentage do you own today, sir?		A.	I've used it, yes, that's correct.
14	A.	I don't know the exact count. I've been giving the stock away to the children.		Q.	And you, yourself, have indicated you've seen the brand name on the product Kaylo for insulation you've used; correct, at L & S?
15	Q.	You still own stock in the company, though; correct?		A.	Yes.
16	A.	Yes.			
17	Q.	You were up to about 89 percent a few years ago; correct?			
18	A.	No. My wife died five years ago. We have been			
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22					
23					
24					
25					

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1		giving stock away for probably ten years prior to that. So now I'm limited to giving away stock from one person.		Q.	Okay. And you've used it -- L & S used Kaylo before 1959; correct?
2				A.	Yes.
3				Q.	And if I would represent to you that Owens-Illinois has indicated in answers to interrogatories that they began to manufacture commercial quantities of Kaylo asbestos containing products in about 1948 and until April 30th, 1958, they made Kaylo -- that, in quote, this defendant sold its Kaylo Containing Manufacturing Division to Owens-Corning Fiberglass Corporation in 1958, if I represent to you that that is on record from Owens-Illinois prior to 1958, would L & S have used Kaylo?
4	Q.	Would you -- If I indicated to you that you testified at a deposition in 1996 that you owned about 89 percent of the stock, would you disagree with that?		A.	Prior to '58?
5	A.	I probably didn't take into consideration that we were -- had been giving it away. That might be reasonably correct, but I -- My accountant would have to go back through the books for that.		Q.	Yes.
6	Q.	And you became a part owner in 1957; correct?		A.	I would imagine that we purchased some.
7	A.	Yes.		Q.	Okay.
8	Q.	Over the years, who has been the primary supplier for L & S?		A.	If Building Service handled it, that was our source.
9		MR. TERSCHAN: Supplier of what?		Q.	And so if you purchased Kaylo, one of the applications for the Kaylo you would purchase would be for steam pipe insulation; correct?
10		MR. SENTENY:		A.	Possibly.
11	Q.	Supplier of products, like asbestos or fiberglass or whatever.			
12	A.	Fiberglass was Owens-Corning.			
13	Q.	Okay. Would you buy directly from Owens-Corning or through an intermediary supplier?			
14	A.	A distributor.			
15	Q.	Who would that distributor be?			

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- 1 Q. Would that be one of the applications?
 2 A. One, yes.
 3 Q. When you first learned of the hazards of
 4 asbestos, or at least the possibility that
 5 people could get cancer from asbestos exposure,
 6 did L & S do anything to ever -- for the
 7 customers who may come into contact with the
 8 asbestos that you sold or installed, do anything
 9 to minimize, reduce the risk to those workers?
 10 A. You want to repeat that?
 11 Q. Yes. You've indicated that at least by 1964, or
 12 if not by the late 1950s, you were aware at
 13 least that people had died from asbestos
 14 exposure; the hazard at least you indicated was
 15 getting cancer.
 16 With that background, I'm asking you,
 17 sir: At any time did L & S do anything to warn
 18 or advise potential workers who came into
 19 contact with asbestos that L & S sold or
 20 installed about the hazards of asbestos or take
 21 any steps to minimize or reduce the hazard of
 22 asbestos to the workers that came into contact
 23 with the product?
 24 A. We weren't that aware of those hazards until
 25 much later.

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- 1 Q. Did you do anything to the customers who were
 2 buying your product where you were installing
 3 the product, warn them of the hazards or make
 4 any recommendations or suggestions?
 5 A. We made recommendations that they switch to
 6 fiberglass because of cost. And later, because
 7 of the -- If they insisted that we use a product
 8 that had contained asbestos and they specked it,
 9 we were obligated to use it.
 10 Q. And anything else, sir?
 11 A. I don't know what you mean by "anything else."
 12 Q. Anything else that you ever did to advise
 13 customers and their employees who may come into
 14 contact with the hazards of asbestos as far as
 15 recommendations and steps to minimize and reduce
 16 the hazards?
 17 A. We were not in a position to do that. We were
 18 told what to do. The specifications were
 19 written by someone other than ourselves just for
 20 any job.
 21 Q. I understand. The question, sir: Can I take it
 22 that you did nothing else -- L & S did nothing
 23 else?
 24 A. Other than what I stated.
 25 Q. L & S is a member of the Wisconsin Insulation

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- 1 Q. Okay.
 2 A. And our switching to fiberglass was more based
 3 on cost factor, having to be a beneficial one;
 4 but we switched products in favor of fiberglass
 5 for the majority of our work in the late '50s
 6 and '60s.
 7 Q. Okay. Then again, sir, what steps did you take,
 8 in the face of the hazard you testified to
 9 you're aware of, to minimize or reduce the risk
 10 to workers?
 11 A. If I testified that I was aware of those hazards
 12 that early, that I don't know. I don't know --
 13 We didn't do anything extraordinary until after
 14 Selikoff's articles became very public.
 15 Q. Okay. And that would then have been when, sir?
 16 A. Oh, probably the late '60s.
 17 Q. What did you do then when the Selikoff article
 18 became public?
 19 A. We warned our employees, suggested that they
 20 didn't smoke, because that was the gist of the
 21 whole article.
 22 Q. Was that only to your employees you suggested
 23 they didn't smoke?
 24 A. Well, they are the only ones we were in contact
 25 with.

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- 1 Contractors' Association; correct?
 2 A. Yes.
 3 Q. When was it formed, sir?
 4 A. It's probably in the deposition somewhere, and I
 5 would certainly agree that whatever I previously
 6 said is the start date of that.
 7 Q. What's your best estimate, sir? I'm not holding
 8 you to a particular, specific year; but a best
 9 estimate as to an approximate time.
 10 A. Oh, I think they formed somewhere in the --
 11 Well, they formed prior to our joining. We were
 12 one of the last holdouts. Let's say the '60s.
 13 Q. Okay.
 14 A. Early '60s.
 15 Q. And when you joined, how many members were
 16 there?
 17 A. Three, four maybe.
 18 Q. Okay. And it included Sprinkmann Sons and L & S
 19 and who else?
 20 A. It was Industrial. I think they were a member.
 21 McDermott out of Rockford was a member.
 22 Q. Is this association still active today?
 23 A. With three members, yes.
 24 Q. Okay. When you joined, what was the purpose of
 25 this association, as you understood it?

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1 A. Just a group of contractors that would discuss
 2 mutual problems and work for the benefit of the
 3 trade.
 4 Q. And would these contractors all be insulators in
 5 the sense that L & S was an insulator and as you
 6 just described earlier today?
 7 A. Yes.
 8 Q. So these would be companies that all do at least
 9 on -- and part of the business would be
 10 commercial insulation for things, including
 11 steam pipes; correct?
 12 A. Yes.
 13 Q. Now, when you started with L & S in 1950, was
 14 A. O. Smith a customer of L & S?
 15 A. Yes.
 16 Q. Okay. When was your first contact in any nature
 17 with A. O. Smith?
 18 A. Well, I was aware that the company was doing
 19 miscellaneous work there prior to my eventually
 20 going out to the site with Mr. Underberg.
 21 Mr. Underberg handled most of their requests.
 22 It was just a habit. They wanted the same
 23 person, and he would always go out and measure
 24 and quote them; and if we were low bidder, we
 25 would be successful in doing it.

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1 "A. O. Smith Building steam pipe insulation";
 2 correct?
 3 A. It says Building 5 and -- 5 and 6, steam pipe
 4 insulation, correct.
 5 Q. Correct.
 6 A. This one doesn't give the year. Is that on that
 7 list?
 8 Q. If you look, sir, at the beginning it shows it's
 9 1947.
 10 A. Well, I was not employed by them then.
 11 Q. I understand.
 12 MR. SENTENY: Let's go off the record
 13 for a second.
 14 (Discussion off the record.)
 15 MR. SENTENY:
 16 Q. Sir, if I direct your attention to just going
 17 back a little bit to 2550, contract number, you
 18 will see at the top of that page, there's a 1947
 19 date; correct?
 20 A. Yes, that's right.
 21 Q. Okay. So you wouldn't have any specific
 22 knowledge of that contract because you hadn't
 23 started with the company then; is that correct?
 24 A. Yes.
 25 Q. Let's just, you know, backtrack for the record.

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1 Q. Did you ever become more involved in that as far
 2 as -- Strike that.
 3 Mr. Underberg, how long was he
 4 responsible for the A. O. Smith job?
 5 A. Until he retired.
 6 Q. When was that, approximately?
 7 A. That would be a pure guess.
 8 Q. Who replaced him?
 9 A. No one.
 10 Q. Did you ever do anything as far as the actual
 11 direct work with A. O. Smith as far as
 12 contracting?
 13 A. I was one of the people that might have gone
 14 there and measured work.
 15 Q. And that work would include steam line, pipe
 16 covering insulation?
 17 A. And plumbing and ventilating and everything that
 18 they requested bids on.
 19 Q. And it would be high temperature lines related
 20 to boilers and such, too?
 21 A. Could be.
 22 Q. Now, sir, I'm going to show you what we
 23 previously marked as Exhibit 1; and I'm going to
 24 show you, as far as a reference, on Contract
 25 No. 2588, which has been highlighted. It says,

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1 Exhibits 1 through 4, we've talked before, these
 2 are copies of the ledgers that you brought here
 3 today?
 4 A. Yes.
 5 Q. Okay. And with that, the ledgers you brought
 6 here today were business records of L & S;
 7 correct?
 8 A. Contract recording dates.
 9 Q. But they are generally business records that
 10 L & S kept; correct?
 11 A. Yes.
 12 Q. And they were kept in the ordinary course of
 13 your business; correct, and documents prepared
 14 by L & S; correct?
 15 A. All of them are there.
 16 Q. But I'm correct, my statement?
 17 A. Yes.
 18 Q. Let's then look to Contract No. 4120, sir. This
 19 is Page 234, Counsel.
 20 MR. TERSCHAN: Thanks.
 21 MR. SENTENY:
 22 Q. 4120, can you read that entry, sir?
 23 A. "A. O. Smith Corporation, Building No. 11, steam
 24 pipe covering."
 25 Q. Okay.

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<p style="text-align: right;">PAGE: 26</p> <p>1 A. 1952. 2 Q. You were working with L & S by that time; 3 correct, sir? 4 A. Yes. 5 Q. Making a reference to steam pipe, that would 6 have been a high temperature line? 7 A. Not necessarily. I think when it was high 8 temperature, they indicated it. 9 Q. Steam is not high temperature? 10 A. Steam could be low temperature, medium pressure 11 and high temperature. 12 Q. You don't believe that generally in cases, steam 13 is indicated to be a high temperature? 14 A. Most -- Most companies didn't have that much 15 high pressure steam. They generated high 16 pressure steam in order to reduce the pressure 17 to low temperature steam, which was more 18 economical to do. 19 Q. Sir, I'm going to direct your attention, I'm 20 going to show you from your -- the Berkhahn, 21 B-e-r-k-h-a-h-n, deposition, taken on 22 January 16, 1998, I'm going to show you -- 23 A. This is -- 24 Q. -- Page 45, sir. Excuse me for coming across so 25 I can look over your shoulder, so I can</p>	<p style="text-align: right;">PAGE: 28</p> <p>1 grant me, it was asbestos insulation that you 2 used? 3 A. It could have been. 4 Q. Were you using fiberglass at that time in 1952? 5 A. No. 6 Q. So it was likely it was asbestos; correct? 7 A. Probably. 8 Q. Okay. And it was probably then like Kaylo, 9 would that also be a fair statement? 10 A. Not necessarily. 11 Q. Would it possibly have been Kaylo? 12 A. Some of it might have been. 13 Q. That was the typical product you bought from 14 Building Services prior to 1958; correct? 15 A. We also bought asbestos-containing products from 16 other companies. 17 Q. But I'm correct, that's a product that you used 18 during that time for insulation for steam lines? 19 A. It was one of the products used. 20 Q. And that would be true for a contract example 21 5910 and 5918; correct? 22 A. Where are you? 23 Q. Just for example, 5910. 24 A. Have you got that? Okay. 25 Q. Would you read that, sir?</p>
<p style="text-align: right;">PAGE: 27</p> <p>1 accurately read it to you. 2 A. Page 45, yeah. 3 Q. In that deposition, sir, there's a reference to 4 a contract number, and it says, quote, "Steam 5 pipe insulation"; correct? Do you see that 6 question there? 7 A. Yes. 8 Q. Then there's a question on page -- I'm sorry, on 9 Line 17, quote, "What does that mean when it 10 says steam pipe insulation?" The answer, quote, 11 "That means they insulated some high temperature 12 steam lines, which was very common at A. O. 13 Smith," unquote. 14 Did I read that correctly? 15 A. Some. Some. 16 Q. Okay. 17 A. Some being maybe 10 percent of all the steam 18 lines. 19 Q. And you said that was very common at A. O. 20 Smith; correct? 21 A. Steam lines were, not high pressure. 22 Q. Did I read that accurately, sir? 23 A. Yes, you did. Some. Yes, I agree with that. 24 Q. When it was high temperature, was it possible 25 that they were -- at least possible, would you</p>	<p style="text-align: right;">PAGE: 29</p> <p>1 A. "1957, A. O. Smith, Building 113, steam pipe 2 insulation." 3 Q. Then 5918, which is the next page. 4 A. "A. O. Smith, Building 1 of forced steam pipe 5 insulation." 6 Q. Were you using fiberglass by that time, sir? 7 A. Yes, we could have at that time with the owner's 8 permission. 9 Q. With the owner's permission? 10 A. Yes. 11 Q. So you had to specifically get permission to use 12 fiberglass? 13 A. If they specified the product, in order for us 14 to change it, we had to get the owner's 15 permission to get that. 16 Q. So do you know what product would have been 17 specified during that time for that contract? 18 A. Not specifically, no. 19 Q. If not specified, what would have been the 20 standard course of procedure to use? 21 MR. TERSCHAN: For L & S? 22 MR. SENTENAY: 23 Q. For L & S. 24 A. We purchased quite a bit of material from 25 Triple A out of Chicago.</p>

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1 Q. And that was what?		1 A. I don't think A. O. Smith is in Milwaukee.
2 A. It was magnesia-type. Not cal-sil, but they		2 Q. Is Tower Automotive still a customer for L & S?
3 called it magnesia.		3 A. What?
4 Q. Did it contain an asbestos product?		4 Q. Is Tower Automotive a customer of L & S?
5 A. It contained some asbestos product.		5 A. We might have done some work there for --
6 Q. Were you also using Kaylo at that time frame?		6 through contractors.
7 A. Could have.		7 Q. Do you know when the last time was you were
8 Q. Okay. Now I'm not going to belabor going		8 there?
9 through all the different contracts; but as you		9 A. No.
10 reviewed the books today, you will agree that		10 MR. SENTENEY: I don't have anything
11 there are steam pipe references, at least as		11 else.
12 exemplified in Exhibit 5 and as set forth in		12 MR. RHOADES: I have nothing.
13 Exhibits 1 through 4 from it, 1947 into at least		13 MR. JARDINE: I have a couple of
14 1970, 1971, through contracts 9078; correct?		14 questions. My name is Mike Jardine, and I've
15 A. Yes, I -- But please note that in '71, there was		15 got a couple questions for you.
16 no more asbestos made.		16 EXAMINATION
17 Q. Okay.		17 BY MR. JARDINE:
18 A. So anything after '71, it had to be fiberglass		18 Q. If I understand this correctly from your earlier
19 or a non-asbestos product.		19 testimony, L & S generally worked at schools and
20 Q. You were using asbestos up to 1970 or '71 then		20 churches and hospitals; or is it my
21 at least; correct?		21 understanding that it is correct they didn't
22 A. If it was required, yes.		22 work at huge places, large places?
23 Q. Now on Exhibit 5, sir, there are references, you		23 A. It's true.
24 know, like are taken from Exhibits 1 through 4.		24 Q. Mostly schools, churches and hospitals?
25 For example, you will see relative -- In the		25 A. Some industrial accounts, but all small batch
	PAGE: 31	PAGE: 33
1 1949 ledger, I'm just going to show you,		1 jobs, fill-in things. That's what most of these
2 Contract 3262, where there's a contractor named		2 are at A. O. Smith, they are small quantities of
3 Standard Distributing Corporation.		3 things, repair jobs I think you would say.
4 A. Yes.		4 Q. Okay. And then also you testified earlier that
5 Q. Okay.		5 by 1953 or 1954, L & S used primarily
6 A. 3262.		6 fiberglass; is that correct?
7 Q. Just for example, when it makes reference to		7 A. We swung toward glass heavily.
8 "contractors," how would that come about? Is		8 Q. And you remember that date being around '53 or
9 that, you know, an intermediary; or was that		9 '54?
10 someone who contacted you, or were they actually		10 A. Somewhere in there.
11 doing the contract work for A. O. Smith, sir, or		11 Q. In general, what -- When L & S was called out to
12 what?		12 do a job, what percentage would involve high
13 A. They were doing the contract work. If there's a		13 temperature lines, would you estimate?
14 contractor mentioned, then we did the work for		14 A. Well, other than an industrial account, very --
15 them. We bid to them.		15 none.
16 Q. So they had the bid with A. O. Smith, and they		16 Q. Of L & S's overall work, though, how much would
17 would have contacted you for the material that		17 involve high temperature lines?
18 they needed; is that how it would work?		18 A. Oh, 5 percent.
19 A. For installing.		19 Q. Now L & S, I think I understand correctly,
20 Q. For installing? And that would be true for the		20 bought its products from outside sources; right?
21 contractor references throughout Exhibits 1		21 A. Other than Building Service, yes.
22 through 4 and summarized in Exhibit No. 5; is		22 Q. In other words, you used more than one supplier;
23 that correct?		23 right?
24 A. That's correct.		24 A. Yes.
25 Q. Is A. O. Smith still a customer of L & S?		25 Q. Now, when you bought materials from one of these

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- 1 various outfits, would you generally ask for a
 2 type of product, or would you ask for a specific
 3 brand name?
 4 A. Well, generically, it was cal-sil; and the trade
 5 names, I don't recall all of them. I'm familiar
 6 with Kaylo, because it was from Owens-Corning,
 7 and it was -- asbestos had a name. Triple A had
 8 a name for it, but I can't tell you all those.
 9 Q. When L & S would work on a job, was there a way
 10 to generalize, would they ask for a type of
 11 material as opposed to a brand name; or would
 12 they say, "Give me this amount of this brand"?
 13 A. They would specify a type of material and allow
 14 a -- and name one or two brands or equal. That
 15 was always the case.
 16 Q. So if on a particular job you would ask for a
 17 type, what was supplied to you could be from a
 18 number of different manufacturers?
 19 A. We might have purchased it from any source, that
 20 type of material.
 21 Q. From job to job, it could be any material?
 22 A. Yes. We didn't stock too much of that material;
 23 it was too costly.
 24 Q. Do you have records to identify which of the
 25 manufacturers' products went to which particular

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- 1 A. No, I can't.
 2 Q. At any rate, as you testified, you wouldn't know
 3 where it went?
 4 A. No.
 5 Q. No, that's not true; or no, you wouldn't know?
 6 A. No, I wouldn't know.
 7 Q. I asked a poor question. Now, in the limited
 8 amount of high temperature work, I think you
 9 made it clear that you used a number of
 10 different brands. Did you use Johns-Manville
 11 insulation?
 12 A. Yes, we did.
 13 Q. Did you use Pabco insulation?
 14 A. I think I remember some of that. That might
 15 have been purchased.
 16 Q. And you also mentioned some material from Atlas,
 17 or is Atlas the brand?
 18 A. No, Atlas Asbestos.
 19 Q. Any others?
 20 A. A Canadian firm. I think Johnson Insulation
 21 from Madison might have gotten into the pipe
 22 covering portion of that, too, at some time.
 23 Q. Now, can you tell me the degree to which
 24 L & S used any one of those in particular?
 25 A. To the degree?

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- 1 job site?
 2 A. That's impossible.
 3 Q. Do you, yourself, know, have any idea which
 4 manufacturers of asbestos products would be at a
 5 specific job site?
 6 A. I've gone through this entire list, and I
 7 couldn't in all honesty tell you -- Only from
 8 the standpoint of knowing what we were doing,
 9 what products in high temperature type, the
 10 cal-sil type material came from. For any job on
 11 that list, no one could tell you.
 12 Q. It's impossible to know?
 13 A. It's impossible.
 14 Q. Now, Mr. Senteney asked you before, you were
 15 asked if you knew that L & S used Kaylo before
 16 1958, and you said "I would imagine." Do you
 17 know that for sure?
 18 A. I'm supposing that they did. We purchased from
 19 Building Service, and I think they had it
 20 available to them, so I assume in the small
 21 quantities that we bought, we probably got some
 22 from them.
 23 Q. But can you testify for sure when L & S used a
 24 product called Kaylo for the first time; do you
 25 know?

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- 1 Q. Can you tell me to what degree L & S used any
 2 one of those in particular?
 3 A. Well, it would rely on the -- I would have to
 4 say, if the specifications demanded that it be
 5 used entirely on that job, not singling out
 6 A. O. Smith or -- but if the government or the
 7 school system or A. O. Smith, that's what they
 8 wanted, that's what you would have to install.
 9 If the opportunity was presented and we could
 10 switch to fiberglass, we did that from a cost
 11 factor.
 12 Q. I think what I'm getting at, do you know how
 13 much Johns-Manville insulation you used as
 14 compared to Pabco?
 15 MR. TERSCHAN: You mean as a
 16 percentage?
 17 MR. JARDINE: Yes.
 18 THE WITNESS: In general, we used so
 19 little overall, it's impossible to factor that
 20 in.
 21 MR. JARDINE:
 22 Q. Okay. And with regard to L & S jobs, you had
 23 mentioned earlier that you associate the Kaylo
 24 that was used with being manufactured by
 25 Owens-Corning; is that correct?

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1	A. That was my assumption.		Is that correct, sir?
2	MR. JARDINE: That's all I have.	2	A. That's correct.
3	MS. SCHAEFER: I have no questions.	3	Q. Now then, on the next page, Page 59:
4	MR. SENTENEY: Just a little bit.	4	Question: "Did you, yourself, actually
5	MR. TERSCHAN: Oh.	5	see the Kaylo product? All my questions are the
6	EXAMINATION	6	specific brand Kaylo."
7	BY MR. SENTENEY:	7	Answer: "Yes."
8	Q. Mr. Borchardt, again I refer you to your	8	Question: "Did you, yourself, see it?"
9	testimony in the Neubauer, N-e-u-b-a-u-e-r,	9	Answer: "Yes."
10	case.	10	Did I read those correctly, sir?
11	A. Yes, I'm aware of Neubauer.	11	A. Yes.
12	Q. The deposition was given on July 14, 1980, sir.	12	MR. SENTENEY: Just off the record.
13	A. Okay.	13	(Discussion off the record.)
14	Q. I refer you to Page 58. The top of the page.	14	MR. SENTENEY: For the record, we're
15	Question: "Mr. Borchardt, you testified that	15	going to mark the actual ledger books 1-A, 2-A,
16	you did use the brand product called Kaylo as	16	3-A and 4-A, which will be kept in the
17	opposed to the general cal-sil product that your	17	possession of L & S's counsel; and I'm done.
18	ticket showed as Kaylo?"	18	(Deposition Exhibit Nos. 1-A, 2-A, 3-A,
19	Answer: "Yes."	19	and 4-A were marked for identification by the
20	Did I read that correctly?	20	Court Reporter.)
21	A. If that's what I said.	21	(Whereupon, the above proceedings
22	Q. Is that true today? Is that accurate?	22	concluded at 10:50 o'clock in the forenoon.)
23	A. Well, I think further along, if you go to one of	23	
24	these depositions, you will see I will -- I	24	* * * *
25	stated under oath that if our ticket said Kaylo	25	

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1	written on it, that doesn't necessarily mean it		
2	came from Owens-Corning.) SS:
3	Q. Did I read that quote correctly?	2	WAUKESHA COUNTY)
4	A. Yes, you did.	3	I, MELODY D. WEST, a Notary Public in and
5	Q. And it goes on to state: "Can you tell me the	4	for the State of Wisconsin, do hereby certify that
6	earliest date that you recall L & S using that	5	ELMER H. BORCHARDT, the witness named herein, personally
7	brand product?"	6	appeared before myself on the 12th day of May, 2003,
8	Answer: "I'm sorry, I can't; but I	7	commencing at 10:00 o'clock in the forenoon at the Law
9	would think, you know, if it was manufactured,	8	Offices of Terschan, Steinle & Ness, 2600 North Mayfair
10	it would have been just a reasonable time after	9	Road, Suite 700, Milwaukee, Milwaukee County, Wisconsin,
11	that that we probably purchased them."	10	and was by me duly sworn to testify the truth and nothing
12	Question: "Are you talking about in	11	but the truth in the within-entitled cause.
13	the '50s or the '60s, as far back as that?"	12	That said deposition was reported by myself
14	Answer: "If it was manufactured in the	13	as an independent court reporter and disinterested person
15	'50s, I'm sure that we purchased some in the	14	and was thereafter transcribed into typewritten form under
16	'50s." Unquote.	15	my direction.
17	Did I read that accurately?	16	I further certify that I am not of counsel
18	A. Yes, you did, for Building Service, Industrial,	17	nor attorney for either or any of the parties to said
19	yes.	18	deposition, nor in any way interested in the outcome of the
20	Q. And it goes on to say, question, on the same	19	cause named in the caption.
21	page: "Did you use that product for specific	20	I further certify that the appearances to
22	types of jobs, or did you use it generally in	21	this deposition are as noted in the index of this
23	insulation?"	22	transcript as set forth on Page 2.
24	Answer: "Only for high temperature	23	
25	insulation." End of quote.	24	
		25	

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1 I have hereunto set my hand and affixed my
2 seal of office this 12th day of May, 2003.
3
4
5
6

7 MELODY D. WEST - NOTARY PUBLIC
8 IN AND FOR THE STATE OF WISCONSIN
9
10
11 My commission expires: November 2, 2003.
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